IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 28051 of 2006(M)

OS.119/2001 of II ADDL.M.C., ERNAKULAM
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PETITIONER:

P.K. KUMARA MENON, AGED 75,
S/O. KRISHNA MENON, NILAKANNATH HOUSE,PERUMBALAM,
CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.C.CHARLES
SRI.A.BALAGOPALAN

RESPONDENTS:
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1. **LEELAMMA, W/O.LATE BALAKRISHNAN,**
   AGED 63, PULPRAYIL HOUSE, PANANGAD,
   KUMBALAM VILLAGE.

2. **SMT. PADMAKUMARI, W/O.SIDHARTHA KAIMAL,**
   AGED 38, PULPRAYIL HOUSE, PANANGAD,
   KUMBALAM VILLAGE.

3. **SUNILKUMAR, S/O.LATE BALAKRISHNAN,**
   AGED ABOUT 33, PULPRAYIL HOUSE, PANANGAD,
   KUMBALAM VILLAGE.

4. **P.P. RAJENDRAN, S/O. P.KRISHNAN,**
   AGED 58, COCHIN PORT TRUST QUARTER NO.E/4/3.

5. **PREETHI RAJENDRAN, W/O. RAJENDRAN,**
   AGED 47, COCHIN PORT TRUST QUARTER NO.E/4/3.

BY ADV. SRI.K.P.MAJEED
SRI.T.B.THANKAPPAN
SMT.P.V.RADHAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.28051/2006 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.NO.119/2001 ON THE FILE OF THE MUNSIFF'S COURT, ERNAKULAM.

EXT.P2; COPY OF THE ORDER DTD. 27/09/2006 PASSED BY THE 2ND ADDITIONAL MUNSIFF'S COURT, ERNAKULAM IN O.S.119/2001.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.28051 of 2006

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Dated: 9th July, 2007

JUDGMENT

Ext.P2 order by which the learned Munsiff has held that the valuation of Ext.P1 suit is not proper and that the court fee paid is insufficient is under challenge in this Writ Petition initiated under Article 227 of the Constitution of India by the plaintiff. Concededly the learned Munsiff has relied on the judgment of a Division Bench of this court in **P.P.S.Pillai v. Catholic Syrian Bank** (2000(3) KLT 629) and another judgment of this court **Cherootty v. Purushothaman** (2005(2) KLT 84). Strenuous and fervent submissions were addressed before me by the learned counsel for the petitioner who placed very strong reliance on an early Division Bench judgment of this court in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (1981 KLT 773). Propriety of valuation and insufficiency of court fees, according to the learned counsel are questions to be decided on the basis of the averments contained in the plaint and the court is not expected to look into the contentions raised in the written statement at all. As for the present suit no serious contention has been raised even regarding the propriety of the valuation and sufficiency of court fees and this according to the learned counsel is the reason why the court did not

formulate an issue regarding valuation and court fees. It is only after the entire evidence of the plaintiff is recorded that the learned Munsiff raised an additional issue and passed the impugned order. The above action of the learned Munsiff is violative of the directives of the Division Bench in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (supra). The decisions which the learned Munsiff had kept in mind are distinguishable on the facts of the present case since in both the cases covered by the decisions, the court had already raised an issue regarding the propriety of valuation unlike the present case.

2. It is true that there is distinction between the facts in the cases covered by the judgment in **P.P.S.Pillai's** case (supra) and **Cherootty's** case (supra) and the present case. In the present case the issue regarding valuation is raised only after the entire evidence is recorded. But neverthless I find myself unable to interfere with Ext.P2 in this case in the supervisory jurisdiction under Article 227 of the Constitution.

3. The supervisory jurisdiction of this court is visitorial in nature and is expected to be invoked only in exceptional cases. It cannot be said that Ext.P2 order is an unsound or unreasonable order. It is

agreed before me that the learned Judge without specifically referring to the judgment in **P.P.S.Pillai's** case (supra) and **Cherootty's** case (supra) has relied on those two judgments. It is discernible that the learned Judge has considered the averments in the plaint also and noticed that under the guise of a prayer for declaration that a registered Will and two sale documents including the document executed in favour of defendants 4 and 5 are invalid and not binding on the properties and seeking recovery of possession of item No.3 property in favour of defendants 4 and 5 is virtually seeking a decree for cancellation of the document in favour of defendants 4 and 5 and a consequential decree of recovery of possession on the basis of such cancellation. Even the document in favour of defendants 4 and 5 discloses a consideration which is much higher than the market value of item No.3 property presently determined as Rs.50,000/-. It is seen that though it is claimed in paragraph 18 of the plaint that item No.3 is an agricultural land capable of being valued in the manner presently done by the petitioner-plaintiff, it is also stated in paragraph 15 of the plaint itself that defendants 4 and 5 have constructed a substantial house on a portion of that property and the

submission of the the learned counsel for the respondents Mr.Thankappan that it is a palatial house which has been constructed by his clients was not disputed before me. The truth that the correct market value of plaint item No.3 was much higher than the nominal amount of Rs.50,000/- determined by the plaintiff as if item No.3 property is agricultural property was discerned by the trial court in its anxiety to get at the truth of the matter and to ensure that the Revenue is able to collect its dues by way of court fees. In fact in paragraph 14 of the judgment of the Division Bench in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (supra) strongly relied on by the learned counsel for the petitioner it has been indicated that the court has also a duty to ensure that the Revenue gets amounts lawfully due to it.

4. Despite the attractiveness of the submissions of the learned counsel for the petitioner on the basis of the judgment of the Division Bench of this court in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (supra) and the distinguishability of the two decisions actually relied on by the learned Munsiff on facts from the present case, I am of the opinion that the impugned order cannot be said to be an unjust order.

The impugned order can be seen to be a just one. Considering the actual scope of the reliefs sought for by the petitioner and the correct market value of item No.3 property, I do not think that this court will be justified in invoking the justice that has been given to the State by passing the impugned order by invoking the visitorial jurisdiction under Article 227.

5. There is yet another reason why this court is justified in declining invocation of supervisory jurisdiction upon Ext.P2. The petitioner himself filed an application for review on Ext.P2 and the learned Munsiff refused to review Ext.P2 by passing a more detailed order on 17.10.2006 in I.A.No.9336/06. The petitioner has not produced a copy of the above order at all even though in the prayer portion a reference is made to the subsequent order passed pursuant to Ext.P2. The petitioner is not entitled to seek invocation of supervisory jurisdiction over a judicial order without even producing a copy of that order. As a matter of fact in that order the learned Munsiff has specifically referred to the judgments in **P.P.S.Pillai's** case(supra) and **Cherootty's** case (supra) and also to the judgment of the Division Bench in **We-Build Pvt. Ltd. v. C.Kamaleswaran**

(supra). In **P.P.S.Pillai's** case (supra) the Division Bench has also held that the defendants' role and say on the question of payable court fee is also important.

The result of the above discussion is that the Writ Petition fails and the same will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**